

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NAEM WALLER,	:	
Petitioner	:	CIVIL ACTION
	:	No. 10-2029
v.	:	
	:	
DAVID VARANO, et. al.	:	
Respondent	:	

**ORDER**

**AND NOW**, this \_\_8<sup>TH</sup> \_\_\_\_ day of \_\_April\_\_\_\_\_, 2013, upon careful and independent consideration of the petition for writ of habeas corpus, the parties' briefs, United States Magistrate Judge L. Felipe Restrepo's Report and Recommendation, and Petitioner's Objections<sup>1</sup> to the Report and Recommendation, it is **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**;
2. The petition for writ of habeas corpus is **DISMISSED** without an evidentiary hearing;
3. There is no basis for the issuance of a certificate of appealability.

s/Anita B. Brody

\_\_\_\_\_  
ANITA B. BRODY, J.

Copies **VIA ECF** on \_\_\_\_\_ to:

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\_\_\_\_\_  
<sup>1</sup> Petitioner's reliance on *Lilly v. United States*, 527 U.S. 116 (1999) is unavailing, because that case involved out-of-court *testimonial* statements that were read into the record at the defendant's trial. Moreover, that case predated *Crawford v. Washington*, 541 U.S. 36 (2004) and *Davis v. Washington*, 547 U.S. 813 (2006), which detail the Court's current jurisprudence on the Confrontation Clause—and which hold that nontestimonial out-of-court statements do not implicate the Confrontation Clause.